

House File 2112 - Introduced

HOUSE FILE 2112

BY SALMON

A BILL FOR

1 An Act relating to dependent adult abuse in facilities and
2 programs, and to elder abuse, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 235E.2, subsection 6, paragraph a, Code
2 2022, is amended to read as follows:

3 a. The department's investigation shall determine if the
4 resident has a guardian, conservator, or attorney in fact. If,
5 upon completion of an investigation, the department determines
6 that the best interests of the dependent adult require court
7 action, the department shall inform any existing guardian,
8 conservator, or attorney in fact of the dependent adult of the
9 department's determination. The department shall also inform
10 any family member or other person for whom the resident has
11 granted permission to have access to the resident's medical
12 and facility records of the department's determination. If
13 an existing guardian, conservator, or attorney in fact of
14 the dependent adult refuses to pursue appropriate relief or
15 remedies provided by law for the dependent adult, or if the
16 dependent adult does not have a guardian, conservator, or
17 attorney in fact, the department shall notify the department
18 of human services of the potential need for a guardian or
19 conservator or for admission or commitment to an appropriate
20 institution or facility pursuant to the applicable procedures
21 under [chapter 125, 222, 229, or 633](#), or shall pursue other
22 remedies provided by law. The appropriate county attorney
23 shall assist the department of human services in the
24 preparation of the necessary papers to initiate the action and
25 shall appear and represent the department of human services at
26 all district court proceedings.

27 Sec. 2. Section 235E.2, subsection 9, Code 2022, is amended
28 to read as follows:

29 9. a. A person required by [this section](#) to report a
30 suspected case of dependent adult abuse pursuant to subsection
31 2 who knowingly and willfully fails to do so within twenty-four
32 hours commits a simple misdemeanor.

33 b. A person required by [subsection 2](#) to report a suspected
34 case of dependent adult abuse who knowingly fails to do so or
35 who knowingly interferes with the making of such a report or

1 applies a requirement that results in such a failure is civilly
2 liable for the damages proximately caused by the failure.

3 c. A person who reports or causes to be reported false
4 information regarding a suspected case of dependent adult abuse
5 pursuant to subsection 2, knowing that the information is false
6 or that the abuse did not occur, commits a simple misdemeanor.

7 Sec. 3. Section 235F.1, subsection 5, paragraph a,
8 unnumbered paragraph 1, Code 2022, is amended to read as
9 follows:

10 "Elder abuse" means any of the following relative to a
11 vulnerable elder in all aspects of the vulnerable elder's life,
12 liberty, and property:

13 Sec. 4. Section 235F.1, subsections 8 and 17, Code 2022, are
14 amended to read as follows:

15 8. "Financial exploitation" relative to a vulnerable elder
16 means when a person stands in a position of trust or confidence
17 with the vulnerable elder and knowingly and by undue influence,
18 deception, coercion, fraud, or extortion, obtains control over
19 or otherwise uses or diverts the benefits, property, resources,
20 belongings, or assets of the vulnerable elder solely for the
21 benefit of someone other than the vulnerable elder and not for
22 the benefit of the vulnerable elder. "Financial exploitation"
23 includes alteration of a governing instrument by a person who
24 stands in a position of trust or confidence with the vulnerable
25 elder.

26 17. "Vulnerable elder" means a person sixty years of age
27 or older who is unable to protect ~~himself or herself~~ the
28 person's self from elder abuse ~~as~~ due to any of the following
29 circumstances:

30 a. As a result of a mental or physical condition ~~or because.~~

31 b. Because of a personal circumstance which results in an
32 increased risk of physical, psychological, or financial harm
33 to the person. Clear and convincing evidence of physical,
34 psychological, or financial harm to the person creates a
35 rebuttable presumption that the person was unable to protect

1 the person's self.

2 Sec. 5. Section 235F.1, Code 2022, is amended by adding the
3 following new subsection:

4 NEW SUBSECTION. 8A. "*Governing instrument*" means a
5 will; a trust; a deed; a custodianship; an insurance or
6 annuity policy; an account with a designation for payment on
7 death; a security registered in beneficiary form; a pension,
8 profit-sharing, retirement, or other employment-related benefit
9 plan; a family limited partnership; an instrument creating or
10 exercising a power of attorney; an estate planning document;
11 or a dispositive, appointment, or nominative instrument of any
12 similar type.

13 Sec. 6. Section 235F.8, subsection 1, Code 2022, is amended
14 to read as follows:

15 1. A proceeding under this chapter shall afford a vulnerable
16 elder due process of law, shall be held in accordance with the
17 rules of civil procedure, except as otherwise set forth in this
18 chapter and in chapter 664A, and is in addition to any other
19 civil or criminal remedy.

20 EXPLANATION

21 The inclusion of this explanation does not constitute agreement with
22 the explanation's substance by the members of the general assembly.

23 This bill relates to dependent adult abuse in facilities and
24 programs and to elder abuse.

25 The bill amends provisions under Code chapter 235E
26 (dependent adult abuse in facilities and programs) to provide
27 that an investigation of dependent adult abuse in a health
28 care facility or hospital by the department of inspections and
29 appeals (DIA) shall determine if the dependent adult has an
30 existing guardian, conservator, or attorney in fact. If upon
31 completion of an investigation, DIA determines that the best
32 interests of the dependent adult require court action, DIA
33 shall inform any existing guardian, conservator, or attorney
34 in fact of the dependent adult of DIA's determination. DIA
35 shall also inform any family member or other person for whom

1 the resident has granted permission to have access to the
2 resident's medical and facility records of the department's
3 determination. If an existing guardian, conservator, or
4 attorney in fact of the dependent adult refuses to pursue
5 appropriate relief or remedies provided by law for the
6 dependent adult, or if the dependent adult does not have a
7 guardian, conservator, or attorney in fact, DIA shall notify
8 the department of human services of the potential need for
9 a guardian or conservator or for admission or commitment of
10 the dependent adult to an appropriate institution or facility
11 pursuant to the applicable procedures under Code chapter 125,
12 222, 229, or 633, or shall pursue other remedies provided by
13 law. The bill also provides that a person who reports or
14 causes to be reported false information regarding a suspected
15 case of dependent adult abuse, knowing that the information
16 is false or that the abuse did not occur, commits a simple
17 misdemeanor.

18 With regard to Code chapter 235F (elder abuse), the bill
19 amends the definition of "elder abuse" to include several
20 actions taken relative to a vulnerable elder in all aspects of
21 the vulnerable elder's life, liberty, and property.

22 The bill amends the definition of "financial exploitation"
23 to limit financial exploitation to that which is solely for
24 the benefit of a person other than the vulnerable elder and
25 not for the benefit of the vulnerable elder. Additionally,
26 under the bill, "financial exploitation" includes alteration
27 of a governing instrument by a person who stands in a position
28 of trust or confidence with the vulnerable elder. The bill
29 provides a definition of "governing instrument".

30 The bill also amends the definition of "vulnerable elder"
31 to include a person 60 years of age or older who is unable to
32 protect the person's self from elder abuse due to a personal
33 circumstance which results in an increased risk of physical,
34 financial, or psychological harm to the person. The bill
35 provides that clear and convincing evidence of physical,

1 psychological, or financial harm to a person creates a
2 rebuttable presumption that the person was unable to protect
3 the person's self.

4 The bill provides that a proceeding under Code chapter 235F
5 shall afford a vulnerable elder due process of law.